Sheet Metal Workers' International Association, Local No. 141, AFL-CIO (Glenway Investments, Inc.) *and* William J. Conover and William T. Kramer. Cases 9-CB-5383-1 and 9-CB-5383-2

25 June 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 3 February 1984 Administrative Law Judge Donald R. Holley issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Sheet Metal Workers' International Association, Local 141, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Order.

DECISION

STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge. Upon original and amended charges filed by William J. Conover and William T. Kramer against Sheet Metal Workers' International Association, Local No. 141, AFL-CIO (Respondent or the Union) in Cases 9-CB-5383-1 and 9-CB-5383-2,[1] the Regional Director for Region 9 of the National Labor Relations Board (the Board) issued a complaint on November 12, 1982, in which he alleged, inter alia, that Respondent had engaged in, and was engaging in, conduct which violates Section 8(b)(1)(B) of the National Labor Relations Act (the Act). By timely answer, Respondent denied it had engaged in the unfair labor practices alleged in the complaint.

The case was heard in Cincinnati, Ohio, on April 18 and 19, 1983. All parties appeared and were afforded full opportunity to participate. Posthearing briefs, which have been carefully considered, were filed by counsel for the General Counsel and counsel for Respondent. On the entire record, and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Glenway Investments, Inc. (Glenway or the Employer), an Ohio corporation, maintains an office and place of business in Cincinnati, Ohio, where it is engaged as a sheet metal, heating, and ventilating contractor in the building and construction industry. During the 12-month period preceding issuance of the complaint, in the course and conduct of its business, Respondent performed services valued in excess of $50,000 in States other than the State of Ohio.

It is admitted, and I find, that Glenway is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. STATUS OF LABOR ORGANIZATION

It is admitted, and I find, that Respondent is a labor organization within the meaning of Section 2(5) of the Act. The record reveals that, at all times material herein, Respondent has been the exclusive collective-bargaining representative of certain employees employed by Glenway. On the facts set forth, I find that jurisdiction over Respondent is appropriately asserted in this case.

[1] In adopting the judge's finding that the Respondent unlawfully disciplined supervisor-members Conover and Kramer in an attempt to impose its interpretation of the contract on their employer, we do not rely on the judge's determination that the Respondent's interpretation of the contract was "patently" "erroneous." We would reach the same result even if it were ultimately determined in a proper forum that the Respondent's interpretation of the contract was correct. See *Teamsters Local 524 (Yakima County Beverage)*, 212 NLRB 908, 910 fn. 5 (1974).

The General Counsel sought to prove at the hearing that after Conover's expulsion from membership, and as a result thereof, the Respondent caused Glenway Investments to remove Conover from his supervisory position, reduce his pay, and eventually lay him off. The judge made no finding on this issue, apparently leaving it to the compliance stage. We, however, find it unnecessary to defer the issue. The record is clear that the decision to take the above actions against Conover was made solely by officers of Glenway. There is no evidence whatsoever in the record that the Respondent instigated those actions. Indeed, Glenway's president admitted that no agent of the Respondent ever demanded or otherwise sought any change in Conover's employment status subsequent to his expulsion from membership. The Board has consistently required evidence of this type to support a finding of causation under Sec. 8(b)(1)(B) of the Act. See *Union Independiente de Empleados de Servicios Legales de Puerto Rico (Corporacion de Servicios)*, 249 NLRB 1044, 1052 (1980), and cases cited therein. Thus, while we are adopting that portion of the judge's recommended Order requiring the Respondent to "make whole" Conover for "any losses he sustained as a result of his expulsion from membership," such losses are limited to any internal union benefits Conover may have lost as a result of his expulsion.

The judge found that Conover was fined and expelled by the Respondent also in part because he had worked with a nonunion man. The judge suggested that to this extent the fine and expulsion were lawful. However, because this basis for the fine and expulsion was commingled with the illegitimate one of imposing its interpretation of the contract on Glenway, the judge found the entire fine and the expulsion unlawful. In light of this finding, we find it unnecessary to decide whether the Respondent's discipline of Supervisor Conover for working with a nonunion man would, standing alone, be lawful under the Act.

[1] Conover filed the original charge in Case 9-CB-5383-1 on September 29, 1982; he filed an amended charge in that case on November 9, 1982. Kramer filed the original charge in Case 9-CB-5383-2 on September 29, 1982; he filed an amended charge in that case on November 9, 1982.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

This is a union fine case. The facts are, for the most part, undisputed.

The Charging Parties, Conover and Kramer, were employed by Glenway as superintendents during early 1980. Although they held management positions, both were members of the Union, which has represented Glenway's sheet metal workers for some time. During the period of concern in the instant case, Glenway and the Union were parties to a collective-bargaining agreement which contained, inter alia, a provision which stated (J. Exh. 2, art. VI, sec. 3):

> It is agreed that *all work performed outside of regular working hours during the regular work week and on holidays* shall be performed only upon notification by the Employer to the local union in advance of scheduling such work. Preference to overtime and holiday work shall be given to men on the job on a rotation basis so as to equalize such work as nearly as possible. [Emphasis added.][2]

Jack McDonald, Glenway's president, testified that, although the Union has uniformly contended that the above-described contractual provision required Glenway to notify Respondent before weekend overtime was performed by its employees, Glenway's practice has been to attempt to notify the Union of overtime work which is to be worked on a weekend but, if union officials could not be reached at the union hall after the decision to perform weekend overtime was made, Glenway would cause employees to work the overtime, notwithstanding the fact that prior notification had not been given to the Union.[3] During early 1980, Glenway's superintendents Conover and Kramer were subjected to internal union discipline when they worked weekend overtime without first notifying the Union. Their individual situations are discussed below.

B. *The Kramer Incidents*

In early 1979 and early 1980, the Employer had a project at the Ramada Inn on which Kramer was a superintendent. When work was caught up on the project, the two employees remaining on the job, Steward Domineack and Oswald, were transferred by Kramer to other projects the Employer had underway. In February 1980, the Ramada Inn job was resumed with different employees. Domineack was not returned to the Ramada Inn job because he was performing "high work" at a Keebler Cookie Company project, work which not all employees were able or willing to do. Kramer, as superintendent on the Ramada Inn job, was approached by Business Agent Scott, who told him that Business Manager Roessler wanted to speak with him because Respondent wanted Domineack returned to the Ramada Inn job as steward. Kramer twice tried unsuccessfully to contact Roessler. Eventually, Business Agent Scott came to the Ramada Inn job and told Kramer the Union wanted Domineack back at the Ramada Inn job. After discussing the matter with John McDonald, an officer of Glenway, Kramer informed Scott the Employer would not return Domineack to the Ramada Inn job.

Another project supervised by Kramer in early 1980 was located at the Hamilton County Courthouse. Problems developed with the air system that Kramer's men had recently installed. At approximately 4:30 p.m. on Friday, February 22, 1980, Kramer was informed by Glenway's vice president and estimator Harmeyer that some duct work had to be sealed the next day in the domestic relations courtroom. The weekend work was necessary because the air system could not be shut down during the week. Kramer testified that he had called the union hall to report the overtime, but since it was after business hours no one answered the phone. He claimed he then decided to perform the necessary work the next day and to notify Respondent of the overtime on the following Monday.

Kramer began the duct sealing work on Saturday at approximately 7:30 a.m. At approximately 9 a.m., Business Agent Scott, who had been called to the courthouse to check on another job, discovered Kramer. Scott asked to see Kramer's union card and, when it was produced, he asked Kramer why he had not called the union hall to report the overtime work. Kramer explained that he had tried to do so but there had been no answer when he telephoned. Scott replied that Kramer should have tried to reach one of the representatives at home. Kramer produced a card that showed only the office numbers of the business agents.

By letter dated March 13, 1980, Kramer was notified that Scott had filed internal union charges against him. The letter states:[4]

> Dear Sir and Brother:
>
> As a member of Local Union No. 141, Sheet Metal Workers' International Association, Cincinnati, Ohio pursuant to Article 18 of the Constitution and Ritual of the Sheet Metal Workers International Association, I, hereby, charge you WM. T. KRAMER, Card No. 568019, with violation of your *Oath of Obligation* and with violation of the following Article of said Constitution and Ritual.
>
> *Article 17, Section 1(e)*: Violating the established union collective bargaining agreements and

[2] Art. VI, sec. 1, of the contract defines "regular working days" and "regular working week" as follows:

> The regular working day shall consist of eight (8) hours labor in the shop or on the job between eight (8) a.m. and five (5) p.m. and the regular working week shall consist of five (5) consecutive eight (8) hour days labor in the shop or on the job, beginning with Monday and ending with Friday of each week.

Patently, weekend overtime work not performed on a holiday is not covered by the contract.

[3] Union Business Manager Roessler testified the Union usually did not become aware that Glenway employees had worked overtime until Glenway submitted monthly reports to the Union in connection with remittances to the various trust funds which are described in the collective-bargaining agreement.

[4] Jt. Exh. 8(a).

rules and regulations of any local union relating to rate of pay, rules and working conditions.

Also, with violation of the Standard Form of Union Agreement, Article VI, Section 3, which reads:

> It is agreed that all work performed outside of regular working hours during the regular work week and on holidays shall be performed only upon notification by The Employer to the local union in advance of scheduling such work. Preference to overtime and holiday work shall be given to men on the job on a rotation basis so as to equalize such work as nearly as possible.

Specifically, on February 23, 1980 (Saturday), you Wm. T. Kramer, Card No. 568019, employee of the Glenway Sheet Metal Co., did perform sheet metal work at the Hamilton County Court House, Cincinnati, Ohio without notifying the Local Union office of your intent to work overtime (Details on Statement of Facts enclosed).

I, also, charge you with violation of the *Addenda to Sheet Metal Workers Agreement Form A-3-71 #9 Steward Clause*, which reads in part: "The steward shall be the second last man to be laid off or transferred from the job, provided he can do available work."

This charge is in reference to the Ramada Inn job on Pfeiffer Rd. at I-71. Sheet Metal Workers' Brother Forrest Domineack, Card No. 649291, the steward for Glenway at the above mentioned job, was, in fact, transferred from that job site under your authority, while there were other sheet metal workers on that job.

Statement of Facts enclosed.
FRATERNALLY YOURS,
/s/ RICHARD L. SCOTT
Card No. 396823
Business Agent

Scott indicated during his testimony that he decided to file charges against Kramer because the latter told him on February 23 that he had not worked overtime before and was unfamiliar with the procedure to be followed, but, when Scott later checked the monthly reports sent by Glenway to the Union for the months of November and December 1979, he learned Kramer had worked significant amounts of overtime during those months.

Kramer attended a trial on the charges before the Union's trial committee on April 4, 1980, and was informed by letter dated May 8, 1980, that the trial committee had found him guilty and recommended he be fined a total of $2100.[5] This decision and recommendation was upheld by a vote of the local membership. Thereafter, Kramer perfected his appeals through every union channel. All appeals were denied. Kramer paid the fine in September 1982.

C. *The Conover Incident*

During the week prior to March 8, 1980, Conover was asked to measure a job for the Employer at a Goodyear store, although at the time he was assigned full-time as superintendent on the St. Francis/St. George Hospital project. Somehow, Conover measured wrong—the equipment made to his specifications did not fit. Conover remeasured the job. The new pieces were to be installed by others on that Friday. However, the job was not completed on Friday. When Conover learned of this, feeling that the holdup was his fault, he decided to complete the installation on Saturday morning, March 8.

That morning, Conover waited at Glenway for some other sheet metal worker to come in. None did. The only other man in the plant was Charles Espich, a nonunion truckdriver. Conover instructed Espich to help him with the installation. At approximately 9:45 a.m., Respondent's business manager Paul Roessler and Business Agent Arthur Kelly responded to a telephone call they said they had received about two men working on top of the Goodyear store. They discovered Conover and Espich. The representatives told Conover that he was in violation of the contract and that he should have called in the overtime. Conover explained that he was trying to get the unit hooked up so that he could get it off his mind and go home to his son, who was experiencing serious physical and mental problems.

After this conversation, Conover, Roessler, and Kelly went to the Employer's shop across the street from the Goodyear store. There, the representatives asked John McDonald what Conover was doing at the Goodyear job when the Union had not been informed of the overtime work. McDonald explained that he did not know that Conover had been working there and complained about Respondent's representatives being rigid about such a minor matter.

Conover subsequently received a letter containing a statement of charges filed against him by Roessler, together with a statement of facts. The letter containing the charges states (Jt. Exh. 9):

> Dear Sir and Brother:
>
> This letter is to inform you charges have been filed against you for violation of Sheet Metal Workers' Agreement and addendums, Article 6, Section 3. It is agreed that all work performed outside regular working hours on regular work week and on holidays shall be performed only on notification by the employer to the Local Union in advance of scheduling such work. Preference to overtime and holiday work shall be given to men on the job on a rotation basis so as to equalize such work as nearly as possible.
>
> I therefore charge you, by your failure to contact the Union office, you were performing work on Saturday, March the 8th, 1980, that you were, in fact, performing unscheduled overtime work.

[5] Kramer was fined $100 for the alleged violation of item 9 of the addendum to the collective-bargaining agreement, i.e., the transfer of the steward. See Jt. Exh. 9.

You are further charged with violation of Article 3, Section 1. The Employer agrees that none but journeyman and apprentice sheet metal workers shall be employed in any work described in Article 1. By your collaborating and committing violation of the collective-bargaining agreement, working with an individual performing sheet metal work who was not a member of this organization.

I further charge you with violating Article 17, Section 1(n) of the Constitution and Ritual of the Sheet Metal Workers' International Association, which reads, "Engaging in any conduct which is detrimental to the best interests of this Association or any subordinate unit thereof or which will bring said unit into disrepute by your performance of sheet metal work," and working with nonunion personnel will only deteriorate the very existence of this local union.

Fraternally yours,
/s/ Paul J. Roessler
Business Manager

On April 22, 1980, Conover attended his trial on the charges and thereafter was notified by letter on May 8, 1980, that the trial committee recommended, and the local membership voted, to fine him a total of $4000 and expel him from membership.[6] Conover then appealed the decision through appropriate internal union channels. Each appeal was denied and by letter dated September 23, 1982, from General Secretary Cecil D. Clay, Conover was informed that his final appeal had been denied and the decision and action of the trial committee and the Local were upheld.

D. *Contentions of the Parties*

Respondent indicated its willingness during the trial to admit that it had violated Section 8(b)(1)(B) of the Act by disciplining Kramer because he transferred its steward off the Ramada Inn job and refused to return him to that job as demanded by the Union.

With respect to the discipline and fines imposed upon Kramer and Conover because of their performance of unreported overtime work on February 23 (Kramer) and March 8 (Conover), respectively, Respondent contends that the discipline imposed in both instances was lawful under the rationale set forth by the Supreme Court in *Florida Power & Light Co. v. Electrical Workers IBEW, Local 641*, 417 U.S. 790 (1974), because during the incidents in question Kramer and Conover were performing bargaining unit rather than supervisory work.[7]

Without attempting to distinguish the present case from *Florida Power & Light Co.*, supra, the General Counsel contends that the record reveals Kramer and Conover were disciplined by Respondent in an attempt to impose Respondent's interpretation of the collective-bargaining agreement on them and this impeded Glenway's control over its superintendent-employer representatives. The General Counsel cites *Typographical Union 18 (Northwest Publications)*, 172 NLRB 2173 (1968), and subsequent cases in which violations were found on the same theory, in support of his contention.

E. *Analysis and Conclusions*

1. The status of Conover and Kramer

Conover, Kramer, and Glenway's president John McDonald were the only witnesses who gave testimony regarding the supervisory status of Conover and Kramer. A composite of their uncontradicted testimony reveals the following:

Glenway utilized some 90 members of the Union in 1980, and its employees were supervised by working foremen selected by the Employer pursuant to the collective-bargaining agreement and by four superintendents who were each normally responsible for five to six jobs at any given time. Conover and Kramer have both been superintendents since at least 1979, and for some unstated period Conover, described by John McDonald as his most experienced superintendent, was the general superintendent and as such coordinated all the jobs and was in charge of the remaining three superintendents. According to both Conover and McDonald, at the commencement of any given job, a superintendent was given the location of the job and the blueprints, and he ran the job from that point forward. The superintendent would schedule the materials for the job, schedule the men on the job, appoint the foremen, and thereafter check the job on a daily basis to assure that the foremen, who actually assigned the work the journeymen performed, were putting in the job correctly.

In addition to performing the overall supervision described, the superintendents, working closely with John McDonald and obtaining his concurrence which was almost automatic, transferred men from one job to another, consulted with the owners concerning the work to be performed, decided when overtime was to be worked and who would perform it, handled all contacts with OSHA and union representatives at the jobsite, handled employee grievances concerning pay shortages and other matters, granted employees time off for short periods without contacting McDonald, and made recommendations concerning longer absences which McDonald approved 95 percent of the time.

Accepting the above-described testimony, which is uncontradicted, I find there is clearly enough to support a finding that Conover and Kramer were supervisors within the meaning of Section 2(11) of the Act. Under Board law, such a finding justifies a further finding that such statutory supervisors are also representatives of the Employer for the purpose of collective bargaining under the so-called reservoir doctrine ennunciated by the

[6] A court reporter was used at Conover's trial. The transcipt, placed in the record as R. Exh. 1, reveals that Respondent's business manager Roessler indicated concern over the fact that report forms submitted by Glenway to the Union revealed that Conover had worked 16 to 30 more hours every month than the average workman and the overtime had not been reported beforehand.

[7] While Respondent denied in its answer that Conover and Kramer are supervisors and/or representatives of the Employer within the meaning of Sec. 2(11) and Sec. 8(b)(1)(B) of the Act, it does not seriously dispute their status.

Board in the *Toledo Blade* case.[8] In the instant case there is no need to rely solely on the *Toledo Blade* doctrine, however, as the record clearly reveals that Respondent's representatives routinely consult with Glenway's superintendents when problems, such as the steward problem described supra, arise at the jobsites.

In sum, it is clear and I find that, at all times material herein, William Conover and William Kramer have been supervisors within the meaning of Section 2(11) of the Act and employer representatives within the meaning of Section 8(b)(1)(B) of the Act.

2. The alleged 8(b)(1)(B) violations

In the instant case, it is clear that Respondent disciplined and fined supervisor-members Conover and Kramer because they, in the course of their employment, engaged in conduct which Respondent viewed as violating the collective-bargaining agreement between the Union and Glenway. Indeed, the charges filed against Kramer specifically charge him with violation of two clauses of the contract and Business Agent Scott admitted that he decided to file charges against Kramer because he concluded the supervisor-member had lied to him about the amount of overtime he had worked prior to February 23, 1980. Similarly, the charge filed by Business Manager Roessler against Conover reveals on its face that he was charged, inter alia, with violating article VI, section 3, of the contract, and the transcript prepared during Conover's trial reveals that Roessler was most concerned that Glenway's superintendents had been working extensive overtime without giving the Union advance notice. It is thus clear, and I find, that the disciplinary actions against both supervisors were rooted in disputes over the interpretation of the collective-bargaining agreement between the Union and Glenway. It is equally clear that the Union chose to object to the actions of Kramer and Conover in the steward and overtime situations by imposing internal union discipline on the Glenway supervisors rather than to object by filing grievances pursuant to the grievance procedure set forth in the collective-bargaining agreement.

In *Typographical Union 18*, supra, the Board held that a union violated Section 8(b)(1)(B) of the Act by imposing discipline and fines on foremen-members for allegedly violating the contract between their employer and the union with respect to work assignments. In finding the described violation, the Board stated (at 2174):

> [The] relationship primarily affected is the one between the Union and the Employer, since the underlying question was the interpretation of the collective-bargaining agreement between the parties. The relationship between the Union and its members appears to have been of only secondary importance, used as a convenient and, it would seem, powerful tool to affect the employer-union relationship; i.e., to compel the Employer's foremen to take prounion positions in interpreting the collective-bargaining agreement. The purpose and effect of Respondent's conduct literally and directly contravened the statutory policy of allowing the Employer an unimpeded choice of representatives for collective bargaining and settlement of grievances. In our view it fell outside the legitimate internal interests of the Union.

While application of the principles set forth in *Typographical Union 18* would appear to compel a conclusion that Respondent violated Section 8(b)(1)(B) of the Act when it disciplined Kramer over the steward matter, and subsequently disciplined both Conover and Kramer because they worked weekend overtime without first notifying the Union that overtime work was scheduled,[9] Respondent contends the Supreme Court's decision in *Florida Power & Light Co.*, supra, should cause me to find that only the discipline and fine imposed on Kramer in connection with the steward matter was unlawful.

In *Florida Power*, the Supreme Court found that the involved unions did not violate Section 8(b)(1)(B) when they disciplined and fined supervisor-members who crossed their picket lines during economic strikes and thereafter performed bargaining unit work. The Court further held that the disciplining of supervisor-members can violate Section 8(b)(1)(B) only when such discipline adversely affects their conduct in performing the duties of, or acting in the capacity of, grievance adjusters or collective bargainers on behalf of the employer.

Subsequent to the Court's *Florida Power* decision the Board has, in a number of cases, considered the question of when union discipline may adversely affect supervisors' conduct in performing the duties of, or acting in the capacity of, grievance adjusters or collective bargainers on the behalf of the employer in situations involving strikes and in nonstrike situations. In the strike situations, the Board has uniformly held that where supervisor-members cross their union's picket lines during the course of a strike and thereafter perform more than a minimal amount of bargaining unit work the union can lawfully discipline or fine them.[10] In the nonstrike situations, however, the Board has continued to utilize *Typographical Union 18* principles, and it has found union disciplinary actions against supervisors unlawful when they were rooted in disputes between employers and unions over the interpretation of their collective-bargaining agreements. Illustrative is the Board's decision in *Yakima Beverage*.[11] In that decision, which was issued subsequent to *Florida Power*, the Board stated it had consistently applied the *Typographical Union 18* principles in finding union disciplinary actions against supervisors unlawful where they are rooted in disputes between em-

[8] *Lithographers & Photoengravers Locals 15-P and 272 (Toledo Blade)*, 175 NLRB 1072 (1969), enfd. 437 F.2d 55 (6th Cir. 1971).

[9] Patently, as the overtime work performed by both Conover and Kramer, which is at issue here, was performed outside the regular workweek and February 23 and March 8 are not recognized holidays, the collective-bargaining agreement did not require Glenway to give the Union advance notice that such overtime was scheduled. Consequently, the situation presented is one wherein Respondent disciplined supervisor-members because they failed to abide by the Union's erroneous interpretation of its collective-bargaining agreement with their employer.

[10] See *Bakery Workers Local 24 (Food Employers Council)*, 216 NLRB 917 (1975); *Typographical Union 101 (Washington Post)*, 242 NLRB 1079 (1979).

[11] *Teamsters Local 524 (Yakima Beverage)*, 212 NLRB 908 (1974).

ployers and unions over the interpretations of their collective-bargaining agreement. Additionally, it noted that, as the fines under consideration there were imposed in a nonstrike setting, arguably for exercising supervisory or management functions, in an effort to impose the respondent's interpretation of the collective-bargaining contract on representatives of the employer, it did not read the Supreme Court's opinion in *Florida Power* to say a union is free to discipline supervisors in such circumstances.[12]

In sum, the collective-bargaining agreement between Respondent and Glenway contained provisions which defined the rights of the parties in overtime notification and steward transfer situations. After erroneously concluding that specific contractual provisions entitled it to demand that steward Domineack be returned to the Ramada Inn job, and entitled it to advance notice before weekend overtime was worked, Respondent chose to impose internal union discipline on Kramer and Conover rather than to remedy the alleged contract violations by utilizing the grievance procedure contained in the contract. In the circumstances, I find, as alleged, that by disciplining and fining William Kramer and William Conover, Respondent violated Section 8(b)(1)(B) as alleged.[13]

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(b)(1)(B) of the Act by fining William Kramer and William Conover and by expelling William Conover from membership, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Respondent will be required to rescind and expunge from its records all references to the fine and expulsion from membership of William Conover and the fine of William Kramer, and it shall refund to them any moneys held on account of the fines assesed. In addition, it will be required to restore William Conover to membership in good standing and make him whole for any losses he sustained as a result of his expulsion from membership. Interest on moneys held on account of the fines and on any backpay due Conover shall be computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977).[14]

[12] See *Teamsters Local 296 (Northwest Publications)*, 250 NLRB 838 (1980), reversed and remanded 656 F.2d 461 (9th Cir. 1981), supplemental decision 263 NLRB 778 (1982), where the Board, in circumstances similar to those in *Yakima Beverage*, originally reached a contrary conclusion, but thereafter found the fine to be unlawful in its Supplemental Decision and Order.

[13] While the record reveals that Conover was charged with working with a nonunion man on March 8, 1980, and his fine and expulsion from the Union was based, in part, on the fact that he was found guilty of such conduct, the record reveals that the Union's principal concern was that Glenway and its superintendents were working weekend overtime without giving Respondent advance notice. In the circumstances, as the Union has commingled lawful and unlawful activity in such a manner as it cannot be differentiated, the entire conduct is unlawful. *H. H. Robertson Co.*, 263 NLRB 1344, 1361 (1982).

[14] See generally *Isis Plumbing*, 138 NLRB 716 (1962).

CONCLUSIONS OF LAW

1. Glenway Investments, Inc. is, and at all times material herein has been, an employer within the meaning of Sections 2(2) and 8(b)(1)(B) of the Act.

2. Glenway Investments, Inc. is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. Respondent Sheet Metal Workers' International Association, Local No. 141, AFL-CIO is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

4. William J. Conover and William T. Kramer are, and at all times material herein have been, supervisors within the meaning of Section 2(11) of the Act and representatives of Glenway Investments, Inc. within the meaning of Section 8(b)(1)(B) of the Act.

5. By imposing fines against William J. Conover and William T. Kramer and expelling Conover from union membership because they allegedly violated the collective-bargaining agreement between Respondent and Glenway Investments, Inc., Respondent has restrained and coerced Glenway in the selection and retention of its representatives for the purposes of collective bargaining or the adjustment of grievances, and has engaged in unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

ORDER

The Respondent, Sheet Metal Workers' International Association, Local No. 141, AFL-CIO, Cincinnati, Ohio, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Fining, suspending from membership, or otherwise disciplining William Kramer and William Conover, or any other supervisor or representative of Glenway Investments, Inc., for allegedly violating the provisions of the collective-bargaining agreement between the Respondent and Glenway Investments, Inc.

(b) In any like or related manner restraining or coercing Glenway Investments, Inc. in the selection and retention of its representatives for the purposes of collective bargaining or the adjustment of grievances.

2. Take the following affirmative action which will effectuate the policies of the Act.

(a) Rescind the fines levied against William Kramer and William Conover.

(b) Refund to William Kramer and William Conover any moneys held on account of the fines assessed against

[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

them with interest as set forth in the section of this decision entitled "The Remedy."

(c) Restore William Conover to membership in good standing and make him whole for any losses he sustained as a result of his expulsion from membership, with interest, as set forth in "The Remedy."

(d) Expunge all records of the fines against Kramer and Conover and the expulsion from membership of Conover from its files.

(e) Post at its offices and meeting halls and other places where notices to its members are customarily posted copies of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[16] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT fine, suspend from membership, or otherwise discipline William Kramer and William Conover, or any other supervisor or representative of Glenway Investments, Inc., for allegedly violating the provisions of the collective-bargaining agreement between us and Glenway Investments, Inc.

WE WILL NOT in any like or related manner restrain or coerce Glenway Investments, Inc. in the selection and retention of its representatives for the purposes of collective bargaining or the adjustments of grievances.

WE WILL rescind the fines levied against William Kramer and William Conover.

WE WILL refund to William Kramer and William Conover any moneys held on account of the fines assessed against them, with interest.

WE WILL restore William Conover to membership in good standing and make him whole for any losses he sustained as a result of his expulsion from membership, with interest.

WE WILL expunge all records of the fines against Kramer and Conover and the expulsion from membership of Conover from our files.

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL NO. 141, AFL-CIO